TAX EXEMPTIONS OF AMERICAN CHURCH PROPERTY.

THE exemption from taxation of public property in the various states of the Union rests on reason and presents no difficulty. If a state were to tax its own property or the property of the counties, cities, towns and villages created by it, the burden of the ultimate taxpayer would not be lightened in the least. Since such property is not only acquired but also maintained at public expense the money necessary for this purpose must in any case be ultimately paid by the owners of private property. An attempt to tax public property would only make the bookkeeping of the tax officers more difficult and would in consequence increase rather than decrease the burden of taxation.

But public property is not the only property thus exempted. Exemption statutes, on the contrary, generally cover private property devoted to charitable and educational ventures as well. To such statutes no valid objection can be raised. Both the education of the young and charity toward the poor are recognized as public functions. Primary schools, high schools, and universities, as well as orphan asylums, hospitals, and poor houses are, therefore, built and maintained with public funds. In fact most of the money obtained by taxation is used by the various states for these two purposes. Since private charity prevents persons from becoming a charge on the state and since private schools relieve the congestion that exists in the public schools, particularly in the cities, it is obvious that the burden of taxation is considerably lightened by these private institutions even though they go beyond the work ordinarily done by the state. The state, therefore, is making a very good bargain in having part of its work performed by them in consideration of this tax exemption. It would be decisively the loser if all these institutions were abolished, their property taxed, and the work done by them transferred to the state. The public nature of the work voluntarily shouldered by these private institutions is, therefore, a full and sufficient justification for the exemption extended to them.

The constitutional provisions or statutory enactments which exempt educational and charitable associations, however, do not stop here. They generally add an exemption, more or less qualified, of the property owned or used by religious bodies. This exemption is not so easily justified on principle as it is supported by authority. It is in fact easier to admire the motive which prompted it than to justify it by any sound reasoning. While charity and education may

be said to be established in the policy of the state, an establishment of religion is expressly prohibited both in the federal constitution and in most if not all the state constitutions. The strictly religious features of church societies can therefore furnish no valid reason for this exemption. The only rational ground remaining on which it can be justified is the benefit accruing to the state through the influence exerted by the various churches on their members. The religious and moral culture afforded by these societies is deemed to be beneficial to the public, necessary to the advancement of civilization and the promotion of the welfare of society.[1] This is so even though the benefits received are of necessity a variable quantity, high in many cases, low in others, and in some instances even entirely absent. Says the Georgia court:

"The duties enjoined by religious bodies and the enforcement by them of the obligations arising therefrom, though beyond the power or scope of the civil government, such as benevolence, charity, generosity, love of our fellow men, deference to rank, to age and sex, tenderness to the young, active sympathy to those in trouble or distress, beneficence to the destitute and poor, and all those comely virtues and amiable qualities which clothe life 'in decent drapery' and impart a charm to existence, constitute not only the 'cheap defense of nations' but furnish a sure basis on which the fabric of civil society can rest, and without which it could not endure."[2] The moral influence exerted by these bodies over their adherents, like the charity administered and the education imparted by private charitable and educational institutions, is therefore the theoretical reason why church bodies are exempted from taxation. "Exemptions are granted on the hypothesis that the association or organization is of benefit to the society, that it promotes the social and moral welfare, and, to some extent, is bearing burdens that would otherwise be imposed upon the public to be met by general taxation."[3]

It must not be supposed, however, that the benefit conferred by churches on the state is the historical reason for the exemptions

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[1] People ex rel. Lady of Angels Seminary v. Barber, 42 Hun. 27; Atlanta v. First Presbyterian Church, 86 Ga. 730, 13 S. E. 252, 12 L. R. A. 852; Commonwealth v. Y. M. C. A., 116 Ky. 711, 76 S. W. 522, 25 Ky. Law Rep. 940, 105 Am. St. Rep. 234.

[2] First M. E. Church South v. Atlanta, 76 Ga. 181, 192.

[3] Y. M. C. A. of Omaha v. Douglas County, 60 Neb. 642, 83 N. W. 924, 52 L. R. A. 123. The fundamental ground upon which such exemptions are based has been said to be "a benefit conferred on the public by such institution and a consequent relief, to some extent, of the burden upon the state to care for and advance the interests of its citizens." M. E. Church South v. Hinton, 92 Tenn. (8 Pickle) 188, 190, 21 S. W. 321, 322, 19 L. R. A. 289. See Roberts v. Bradfield, 12 App. D. C. 453; Lefevre v. Detroit, 2 Mich. 586, 592.

granted to them. It is more in the nature of an after-thought to justify a practice as old as the oldest of the thirteen colonies. When the practice of exempting church property developed there was a far better and more conclusive reason for it than exists today. Church and state in these days were not separated. The church was established. It was a public agency just as cities and villages are today. It was as much a municipal corporation as the town. It followed that a taxation of church property would have been but an idle ceremony. As well might a court house or a city hall be subjected to taxation. Church property being public property supported by public taxes could not but be exempt from taxation. So long as towns "exercised parochial functions, and raised taxes for supporting and maintaining houses of public worship, those places of worship were exempt from taxation as public property by the nature of things, and not by the constitution or by statute."[4]

When dissenting churches began to grow up alongside of the established church, their essentially private character was not at first recognized. Not only were they not taxed but they actually, after the first enmity toward them had worn away, were made the recipients of money raised by taxation. Since every inhabitant of the colony was supposed to attend some church and to pay taxes for its support, money flowed into the treasuries of parishes which it was felt to be unjust to retain, since it was paid by adherents of dissenting churches. Arrangements were therefore made by which this money was turned over to these dissenting churches provided they came up to a certain standard and provided the taxpayer had filed a certain statutory notice with the parish clerk. In course of time this arrangement was relaxed to such an extent that the taxes were allowed to be paid to the dissenting church body direct. From this condition of affairs it was but a short step to complete religious liberty. It is obvious, however, that so long as church societies were the recipients of money raised by taxation there was a strong reason why they should be exempt from taxation.

Nor did the custom which had thus grown up of exempting church property from taxation cease when the church was disestablished and full religious liberty was achieved. The practice of exempting them was universally considered to be proper and was "so entirely in accord with the public sentiment, that it universally prevailed."[5] No need of exemption laws was therefore felt in Massa-

[4] Franklin Street Society v. Manchester, 60 N. H. 342, 349.
[5] State v. Jersey City, 24 N. J. L. (4 Zab.) 108, 120.

chusetts till 1837,[6] in New Hampshire till 1842,[7] and in New Jersey till 1851.[8] Then, however, the people woke up to the fact that the exemptions given to church property rested on a custom the reason for which had disappeared. A more solid foundation for this custom had to be found. The attacks made, by those who were adverse to churches, against the custom were unanswerable. An appeal was therefore made to the legislatures which, obeying "the almost universal, innate promptings of the human heart,"[9] promptly passed such exemption statutes as were demanded by public opinion.

Nor were statutes alone deemed sufficient, for statutes may be declared unconstitutional. A constitutional provision alone could definitely take the matter out of all dispute. No such provision can be found in the earlier constitutions. In fact among the constitutions which are in force today ten, adopted between 1780 and 1867, are still entirely silent on this matter.[10] In these states the statutes passed by the respective legislatures are the only foundation on which the practice rests today.[11] In all the other thirty-eight states, however, the question has been put at rest by constitutional provisions or amendments. Of these states thirteen, by constitutions adopted between 1859 and 1911, have exempted certain enumerated property by self-executing provisions which either exempt certain property in express terms[12] or prohibit the legislature from taxing it,[13] or in addition to exempting it confer upon the legislature the power to supersede the exemptions thus granted.[14] The constitutions of the remaining twenty-five states merely recognize and limit to a greater or less extent the legislative power to pass exemption statutes but do not *per se* attempt actually to exempt any property.

[6] All Saints Parish v. Brookline, 178 Mass. 404, 59 N. E. 1003, 52 L. R. A. 778.

[7] Franklin Street Society v. Manchester, 60 N. H. 342, 349.

[8] State v. Jersey City, 24 N. J. Law (4 Zab.) 108.

[9] Howell v. Philadelphia, 1 Leg. Gaz. R. 242, 8 Phila. (Pa.) 280.

[10] The following are the names of these states and the years when their constitutions were adopted: Massachusetts 1780, New Hampshire 1784, Vermont 1793, Connecticut 1818, Maine 1819, Rhode Island 1842, New Jersey 1844, Wisconsin 1848, Iowa 1857, and Maryland 1867.

[11] Massachusetts Revised Laws, ch. 12, § 5; New Hampshire, ch. 55, § 2; Vermont Public Statutes, §§ 496, 498; Connecticut General Statutes, § 2315; Maine Revised Statutes, ch. 6, § 155; Rhode Island, ch. 56, § 2; New Jersey Compiled Statutes, Taxation, § 3; Wisconsin Revised Statutes, § 1038 (3); Iowa Annotated Code, § 1304; Maryland Public General Laws, Art. 81, § 4.

[12] Kansas (1859) Art. 11, § 1; Arkansas (1874) Art. 16, § 5; Wyoming (1889) Art. 15, § 12; Kentucky (1890) § 170; Utah (1895) Art. 13, § 3; South Carolina (1895) Art. 10, § 4; California (Amendment 1900) Art. 13, § 1½; Louisiana (1898) Art. 230; Oklahoma (1907) Art. 8, § 3; New Mexico (1911) Art. 10, § 6.

[13] Alabama (1901) § 91, held to be self-executing in Anniston City Land Co. v. State, 160 Ala. 253, 48 So. 659.

[14] Colorado (1876) Art. 10, §§ 5, 6; Virginia (1902) § 183.

While three of these twenty-five constitutions, adopted between 1857 and 1889, require that the legislature "shall by general law" exempt from taxation certain enumerated property,[15] thirteen others, adopted between 1851 and 1910, confer upon that body a greater discretion by providing that it "may" exempt such property.[16] In four other constitutions of recent date the sole limitation imposed on the legislative discretion is the requirement (contained also in a good many of the constitutions already referred to) that exemptions are to be granted only by general laws.[17] Of the five remaining states, four by constitutions adopted between 1851 and 1885 merely recognize the power of the legislature to pass exemption statutes by providing that all property shall be taxed except such "as may be exempted (or specially exempted), by law,"[18] while the other constitution, adopted in 1850, approaches the difficulty from the opposite direction by providing that taxes shall be levied on such property as shall be prescribed by law.[19]

Of these two general classes of constitutional provisions the self-executing provisions offer no difficulty whatever. They are as complete in themselves as any statute can be. They can therefore stand alone and will *per se,* without any action by anyone, exempt from taxation such property as they cover. In the absence of a provision giving the legislature power to supersede them they are beyond the ability of that body to add or detract. They stand like a rock in the surging waters of legislative moods. They stand till they are abolished by the same power that put them into the constitution. They are, in other words, the law definitely laid down by the highest law-making power known to our system of government.

Entirely different principles apply to those constitutional provisions which are not self-executing. Such provisions are powers of attorney to the legislature rather than laws. They merely authorize the legislature to act within certain limits but, with the exception of those which require the legislature "shall" pass such laws, leave it in the discretion of that body whether it is to act in whole,

[15] Minnesota (1857), Art. 9, § 3; North Dakota (1889) § 176; South Dakota (1889) Art. 11, §§ 5, 6.

[16] Ohio (1851) Art. 12, § 2; Tennessee (1870) Art. 2, § 28; Illinois (1870) Art. 9, § 3; West Virginia (1872) Art. 10, § 1; Pennsylvania (1873) Art. 9, §§ 1, 2; Nebraska (1875) Art. 9, § 2; Missouri (1875) Art. 10, § 6; Texas (1876) Art. 8, § 2; North Carolina (1876) Art. 5, § 5; Georgia (1877) Art. 7, § 2, §§ 2, 4; Montana (1889) Art. 12, § 2; Idaho (1889) Art. 7, §§ 4, 5; Arizona (1910) Art. 9, § 2.

[17] Washington (1889) Art. 7, § 2; Mississippi (1890) § 90 (h.); New York (1894) Art. 3, 18; Delaware (1897) Art. 8, § 1.

[18] Indiana (1851) Art. 10, § 1; Oregon (1857) Art. 9, § 1; Nevada (1864) Art. 10, § 1; Florida (1885) Art. 9, § 1.

[19] Michigan (1850) Art. 14, § 11.

or part, or at all. Within the limits thus outlined by the enumeration of the constitution[20] the legislature therefore is free to act as it may deem "it just and consistent with the higher claim of the government."[21] The extent and the manner of the encouragement to be conferred upon religious associations, by exempting their property from taxation[22] as well as the classification and description of such property[23] will under such constitutions be confided to the wisdom and discretion of the legislature. It may exercise this power "to the full extent, or in part, or decline to exempt at all. It can exempt one kind of property held for such purposes, either realty or personalty, and tax other kinds. It can exempt partially, as for instance up to a certain value, and tax all above it. It can exempt the property held for one or more of these purposes and tax that held for others."[24] While it cannot, under a constitution authorizing an exemption of property *used exclusively* for school or religious purposes, exempt such school property as is not shown to be used for school purposes[25] or parsonages—since their use is secular rather than religious[26]—it may confine the exemption to such property as is not only used exclusively for religious purposes but is also owned by the religious society in question.[27]

The constitutions of the various states may therefore be divided into three classes, namely, (1) those which are silent on the matter, (2) those which contain self-executing provisions, (3) those which contain express powers to the legislature to pass exemption statutes. It is obvious that no question of constitutionality can arise under the second of these classes. A provision which is a part of the constitution cannot be in contravention of it. In regard to the third class the question of constitutionality is confined to the query whether the legislature has kept within the power conferred upon it. In regard to the first class, however, the question is not so simple and therefore deserves a somewhat more extended notice.

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[20] Louisiana Cotton Mfg. Co. v. New Orleans, 31 La. Ann. 440.

[21] Matlack v. Jones, 2 Disney (Ohio) 2, 5.

[22] Lefevre v. Detroit, 2 Mich. 586, 592; In re Walker, 200 Ill. 566, 66 N. E. 144; People ex rel. McCullough v. Deutsche Ev. Luth. Jehovah Gemeinde, 249 Ill. 132, 135, 94 N. E. 162; Louisiana Cotton Mfg. Co. v. New Orleans, 31 La. Ann. 440, 443.

[23] Gerke v. Purcell, 25 Ohio St. 229, 245.

[24] United Brethren of Salem v. Forsyth County, 115 N. C. 489, 493, 20 S. E. 626; Davis v. Salisbury, 161 N. C. 56, 76 S. E. 687.

[25] People ex rel. McCullough v. Deutsche Ev. Luth. Jehovah Gemeinde, 249 Ill. 132, 94 N. E. 162.

[26] People ex rel. Thompson v. First Congregational Church of Oak Park, 232 Ill. 158, 83 N. E. 536.

[27] People ex rel. Swigert v. Anderson, 117 Ill. 50.

The power of a legislature to exempt church property in states whose constitution is silent on this matter must be traced back to immemorial usage. There has probably never been a general tax law without exemptions.[28] Of the classes that have enjoyed exemption none have been more meritorious—and many have been less so—than churches. When the constitutions which are silent on this matter were adopted it was and remained a recognized practice to exempt church property from taxation. That this produced a shifting of the burden of taxation is clear beyond cavil. "It does not require profound reflection to reach the conclusion that whatever deficit there is in the fiscal budget due the State for any given year, by reason of exemptions of property which would otherwise be required to contribute to the common weal, is cast as an additional burden upon the other taxpayers; and it results, therefore, that every exemption is indirectly an additional tax upon the property owners not enjoying a like benefaction."[29] That a bestowal of such favors indirectly by an exemption from taxation instead of directly by a gift from the state is unsatisfactory and that its result may be that "valuable privileges are enjoyed without gratitude and regarded by others with envy and dissatisfaction,"[30] is also true. Whatever, however, the principles of the matter and the rights of the state, the habit of not taxing such property is inveterate. The Illinois court has therefore said that religion and religious worship have not been "so placed under the ban of the constitution that they may not be allowed to become the recipient of any incidental benefit whatsoever from the public bodies or authorities of the state."[31] While the New Hampshire[32] and Indiana courts[33] have thrown doubt upon the constitutionality of exemption laws in the absence of a constitutional provision authorizing them, the Georgia court has strenuously argued that an exemption of church property is not in conflict with a constitutional provision which prohibits money to be taken from the public treasury "in aid of any church, sect or denomination," saying: "The manifest object of the provision was to prevent any appropriation or subsidy that might look even remotely to the establishment of a state religion, and thereby prevent the full enjoyment of that freedom of worship secured by the same instru-

[28] In re Tax Cases, 12 Gill and J. (Md.) 117, 143.

[29] Commonwealth v. Thomas, 119 Ky. 208, 213, 214, 83 S. W. 572, 26 Ky. Law Rep. 1128, 6 L. R. A. (N. S.) 320.

[30] Brainard v. Colchester, 31 Conn. 407, 410.

[31] Nichols v. School Directors, 93 Ill. 61, 64.

[32] Franklin Street Society v. Manchester, 60 N. H. 342.

[33] M. E. Church v. Ellis, 38 Ind. 3, 7.

ment to every inhabitant of the state."[34] In the only case in which the matter has come up squarely, the contention that such an exemption is in conflict with a constitutional provision providing that no person shall be compelled to "pay tithes, taxes or other rates, for building or repairing places of worship, or the maintenance of any minister or ministry" has been denied, the court saying that such exemption was not included in the words of the constitution.[35]

The important question, next to the question of constitutionality, is the question of the construction of exemption statutes, whether these be contained in legislative enactments or are part of the constitution in the form of self-executing provisions. The general rule of strict construction applied to such statutes is familiar, and has been iterated and reiterated by the courts in probably a majority of the cases which deal with the question of exemption.[36] Since taxation is the normal condition, while exemption is an abnormality, the leaning of the judicial mind naturally is toward taxation and away from exemption. It follows that the exemption claimant has the burden of proof. He must point out the statute or constitutional provision under which he claims his privilege. He must bring his case either literally or by clear intendment within the terms of such statute or constitutional provision. The abandonment of taxation in any particular case will not be presumed but must be clearly proved. In making this proof the claimant will not be allowed to resort to implication nor will the courts aid him by judicial legislation. They will not extend the statute beyond its plain meaning. They will not discriminate in favor of any person or institution. Whatever discrimination is made must have its source with the law-making body and not with the judges. In cases of doubt as to the meaning of the written law such doubt will be resolved against and not in favor of exemption. It has therefore been held that where certain land was exempted "while the same continued to be owned" by the church organization the fund realized by a sale of such land is subject to taxation.[37] Where a charter permitted a church cor-

[34] First M. E. Church South v. Atlanta, 76 Ga. 181, 196.

[35] Griswold College v. State, 46 Iowa 275, 26 Am. Rep. 138.

[36] The following are merely a few such cases arising in various states. New Haven v. Sheffield, 30 Conn. 160, 171; Atlanta v. First Presbyterian Church, 86 Ga. 730, 13 S. E. 252, 12 L. R. A. 852; People ex rel. Breymeyer v. Watseka Camp Meeting Association, 160 Ill. 576, 43 N. E. 716; In re Walker, 200 Ill. 566, 66 N. E. 144; Orr v. Baker, 4 Ind. 86; M. E. Church v. Ellis, 38 Ind. 3; St. Peter's Church v. Scott County, 12 Minn. 395; Ramsey County v. Church of the Good Shepherd, 45 Minn. 229, 47 N. W. 783, 11 L. R. A. 175; Nevin v. Kroilman, 38 N. J. Law 323, affirmed, 38 N. J. L. 574; State v. Axtell, 41 N. J. Law 117; United Brethren of Salem v. Forsyth County, 115 N. C. 489, 20 S. E. 626; Katzer v. Milwaukee, 104 Wis. 16, 80 N. W. 41.

[37] Gorham v. Ministerial Fund, 109 Me. 22, 82 Atl. 290.

poration to hold property to the amount of $350,000 exempt from taxation and such property though originally worth less than that sum had since become worth almost a million the Massachusetts court has held that it was subject to taxation insofar as it exceeded the sum fixed by the charter.[38]

This rule of strict construction, however, while generally applied, must not be stretched beyond its fair meaning. It is not so narrow and rigid in its application as to defeat the law-makers' intention ascertained from all the competent evidence. Though called a rule "it is merely evidence to be weighed; and its weight depends upon its reasonableness, and not alone upon its verbal applicability. In other words, it is the duty of the court to ascertain and carry out the intention of the legislature; and that fact is to be found, not by the mechanical or formal application of words and phrases, but by the exercise of reason and judgment. If the literal significance of statutory language, as applied to the facts of a particular case, makes the meaning absurd, strange or inexplicable, it cannot be adopted as the only test of the legislative purpose, without either imputing to the legislature a senseless design, or judicially evading the duty of ascertaining the intent. If the so-called rule of strict construction, as applied to statutes exempting certain property from taxation, is so strictly applied as to render the exempting language so narrow and restricted as to defeat the apparent legislative purpose, it is clear that too much sacredness is attached to a mere rule, and that it should be either abrogated or applied with more liberality and reason."[39] It has therefore been said that in construing such a statute "all its terms must be read together, and some regard must be had to the settled legislative policy of the State."[40] It has been recognized that the object of exemption statutes is to foster religious societies and that they hence should be reasonably construed in furtherance of this object and should not be frustrated by finely drawn technicalities.[41] In a number of cases courts have therefore even applied a liberal rule of construction so far as religious societies are concerned.[42] Examples of both strict and liberal construction will be found in the following pages of this article.

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[38] Evangelical Baptist Benevolent and Missionary Society v. Boston, 192 Mass. 412, 78 N. E. 407.

[39] St. Paul's Church v Concord, 75 N. H. 420, 423.

[40] Louisville v. Werne, 25 Ky. Law Rep. 2196, 2198, 80 S. W. 224.

[41] Shaarai Berocho v. New York, 18 N. Y. Supp. 792, 60 N. Y. Super. Ct. (28 Jones and S.) 479.

[42] Griswold College v. State, 46 Iowa 275, 26 Am. Rep. 138; Watterson v. Halliday, 77 Ohio St. 150, 82 N. E. 962; Mattern v. Canevin, 213 Pa. 588; General Assembly v. Gratz, 139 Pa. St. 497; Poultney Congregational Society v. Ashley, 10 Vt. 241.

Whether an exemption statute is a contract whose impairment is forbidden by the federal constitution is a question that has but seldom come before the courts. There can be no question but that large denominations might be seriously embarrassed if all exemption privileges were suddenly withdrawn from them. No such attempt however has been made nor is it likely that it ever will be made. The question whether such a statute amounts to a contract which the legislature cannot impair has therefore been raised in only a few cases. It has been pointed out that "to give a law of general exemption from taxation the character of an irrepealable contract, there must be a consideration; for an exemption, made as a privilege merely, may be revoked at any time."[43] Such a consideration has been discovered by the New York Supreme Court in the fact that a gift was made to the society in reliance on this statute.[44] The Connecticut court in its early days wrestled with this question and after considerable vacillation practically decided that an exemption statute creates no such contract as is contemplated by the Federal Constitution. After holding that a statute passed in 1702 for the purpose of enabling the giving of gifts for charitable purposes amounted to a contract for the exemption of personal property[45] as well as real estate,[46] it soon proceeded to doubt its former decisions though yielding to them as authorities,[47] and still later following them over a vigorous dissent upon the mere ground of *stare decisis*.[48] When it was again called upon to pass upon the matter it evaded the issue by distinguishing the cases before it on the facts,[49] and when this could not be done as to the next case presented to it it at last placed itself in a defensible position by practically reversing its former decisions.[50] On the strength of these authorities there can be no question but that a general exemption statute cannot be considered as a contract which may not be impaired by the state.

In considering the subject of tax exemption taxes must not be confounded with special assessments. Special assessments are not taxes within the constitutional provisions. They are payments for special benefits received, while taxes are burdens, charges or imposi-

[43] Franklin Street Society v. Manchester, 60 N. H. 342, 350.

[44] People ex rel. Diocese of Long Island v. Dohling, 39 N. Y. Supp. 765, 6 App. Div. 86.

[45] Atwater v. Woodbridge, 6 Conn. 223.

[46] Osborne v. Humphrey, 7 Conn. 335.

[47] Parker v. Redfield, 10 Conn. 490.

[48] Landon v. Litchfield, 11 Conn. 251.

[49] Seymour v. Hartford, 21 Conn. 481; New Haven v. Sheffield, 30 Conn. 160.

[50] Brainard v. Colchester, 31 Conn. 407.

tions placed on persons or property for general public uses. Special assessments go on the principle that "if an improvement is to be made, the benefit of which is local, it is but just that the property benefited should bear the burden."[51] To this rule church property can form no exception. It is as much benefited as other property. Since it receives the benefit it ought, in justice to adjoining property owners, assume the burden. To exempt it would throw the burden of paying for a street improvement in front of a church on the adjacent lots. The increased value of the church property after the improvement would represent an involuntary contribution to it on the part of its neighbors. It is therefore a rule absolutely and unanimously established in the jurisprudence of the various States of the Union that exemptions of property devoted to religious uses do not cover special assessments.[52] The Pennsylvania, Indiana and Georgia courts which at one time had strayed away from this rule[53] have all retraced their steps,[54] the latter court saying that the law is not a "refuge and safe asylum for all the errors that creep into it."[55] This error, so far at least as the Indiana court is concerned, was caused by an accidental omission in the assessment statute, a "legislative *casus omissus,*" by which machinery was provided for the special assessment of only such property as was on the tax roll. Since exempt property was not on the tax roll its exemption by accident, for the time being till the legislature could meet and remedy the defect, became an assured fact.[56] Such omissions have cropped up also in other states and have led to different results, the New York court holding the same as the Indiana court,[57] while the Arkansas court has by judicial legislation sought to cure the legislative defect.[58]

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[51] Lockwood v. St. Louis, 24 Mo. 20, 22.

[52] Chicago v. Baptist Theological Union, 115 Ill. 245; Dolan and Foy v. Baltimore, 4 Gill (Md.) 394; Ottawa v. Free Church, 20 Ill. 423: Lefevre v. Detroit, 2 Mich. 586; Lockwood v. St. Louis, 24 Mo. 20; Matter of Nassau Street, 11 Johns. 77; Harlem Presbyterian Church v. New York, 5 Hun 442; Gilmour v. Pelton, 5 Ohio Dec. (Rep.) 447; Northern Liberties v. St. John's Church, 13 Pa. (1 Harris) 104.

[53] Erie v. First Universalist Church, 105 Pa. 278; Jenkintown Borough v. Jenkintown Baptist Church, 5 Pa. Co. Ct. Rep. 385; Lowe v. Howland County, 94 Ind. 553; First M. E. Church South v. Atlanta, 76 Ga. 181; St. Mark's Church v. Brunswick, 78 Ga. 541; Atlanta v. First Methodist Church, 83 Ga. 448.

[54] Sewickley M. E. Church's Appeal, 165 Pa. 475, 30 Atl. 1007, 35 W'kly Notes Cas. 554; Harrisburg v. St. Paul's Church, 5 Pa. Dist. R. 351; Rausch v. United Brethren in Christ Church, 107 Ind. 1; Atlanta v. First Presbyterian Church, 86 Ga. 730, 13 S. E. 252, 12 L. R. A. 852.

[55] Atlanta v. First Presbyterian Church, 86 Ga. 730, 733, 13 S. E. 252, 12 L. R. A. 852.

[56] Ft. Wayne Presbyterian Church v. Ft. Wayne, 36 Ind. 338, 10 Am. Rep. 35.

[57] In re Second Avenue M. E. Church, 66 N. Y. 395, reversing 5 Hun. 442.

[58] Ahern v. Texarkana Board of Improvement, 69 Ark. 68, 72.

A far more serious defect however will sometimes come to the surface in the administration of the assessment law. It has been intimated in New York that the benefits which result to church property from special improvements are less than those resulting to other property, and that hence an assesssment by which such property is put on equal terms with other property is unreasonable and extravagant.[59] This holding opens the gate wide to a favoring of church property in such matters which in effect amounts to an exemption resting in the discretion of the officers in control of the particular assessment. This, of course, inevitably results in the most vicious form of exemption imaginable. An assessment in which church property paid but one-ninth of its equitable share, has therefore been held to be invalid in New York.[60]

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[59] Matter of Nassau Street, 11 Johns. 77.

[60] People v. Syracuse, 2 Hun 433, 5 Thomp. and C. 61.